

**FRANK MAKES
UNIQUE
POINT IN NEW
FIGHT
BEFORE U. S.
COURT**

In Petition to Judge
Newman

for Writ of Habeas
Corpus

to Set Aside Verdict, He At- tacks State Supreme Court

Leo M. Frank's petition for a Habeas Corpus writ, filed Thursday afternoon with O. C. Fuller, clerk of the United States District Court, will be heard by Federal Judge W. T. Newman Saturday morning at 10 o'clock. The hearing will be in Judge Newman's chambers in the federal building.

It was owing to the fact that Solicitor Hugh M. Dorsey was engaged in the Superior Court and Attorney General Warren Grice was out of the City that Judge Newman delayed the hearing. Solicitor Dorsey and Mr. Grice have been furnished with copies of Frank's petition and they will be present at the hearing to represent the State.

In his petition, Frank alleges that he has been denied due process of law and the equal protection of the law by both the Fulton Superior Court and the Georgia Supreme Court. He argues that when the Judge of the Superior Court allowed the jury to bring in the original verdict of guilty against him in his absence, it forfeited jurisdiction of the Case, was without power to pronounce sentence, and the judgment was, therefore, void.

SUPREME COURT'S FORMER ACTS.

The decision of the Supreme Court in denying Frank's motion to set aside the verdict and holding that he should have raised

this point in his motion for a new trial, is attacked in the petition as follows:

“Under previous decision of the Supreme Court of Georgia, and under the practice which had prevailed throughout the State prior to the aforesaid decision rendered in my Case on November 14, 1914, as aforesaid, the proper procedure to attack as a nullity a verdict rendered in the absence of a prisoner, had been held to be a motion to set aside the verdict. A motion for a new trial was treated as not being the proper remedy.”

“Such former decisions of the Supreme Court of Georgia were unanimous decisions, and under the laws of the State of Georgia had the force of a Statute until reversed by a full bench, after argument, on a request for review granted by the Court.”

“No previous decision of the Supreme Court of Georgia nor of the Court of Appeals of said State, said Courts being its only Appellate Courts and its highest Courts, had ever declared that a motion to set aside as a nullity a verdict rendered in a prisoner’s absence, was not an available remedy to attack such verdict. The decision of the Supreme Court of Georgia in my Case, which determined that a motion for a new trial was an available remedy in such a Case and denied my right to move to set aside the verdict on the aforesaid grounds, was the first decision of its kind ever rendered by said Court or by the Court of Appeals of Georgia.”

ROBBED OF RIGHTS.

“The said decision had the effect of depriving me of a substantial right given to me by the law in force at the time to which my alleged guilt related, and at the time of the reception of the verdict against me and of the presentation and decision of the motion for a new trial, and took from me a right which at all of said times was vital to the protection of my life and liberty, and constituted the passing of an ex post facto law, in violation of the prohibition contained in Article 1, Section 10, of the Constitution of the United States, and was illegal and void.”

“The said judgment of the Supreme Court of Georgia, rendered on November 14, 1914, likewise deprived me of due process of law, and of the equal protection of the laws, within the meaning of the fourteenth amendment to the Constitution of the United States, because the Court thereby, in effect, declared that, in order to avail myself of my aforesaid Constitutional rights to wit, the assertion of my right to due process of law, to the equal protection of the laws, I would be compelled to subject myself to a secondary jeopardy, thus depriving me of my aforesaid Constitutional rights, except on the illegal condition of the surrender by me of the right secured to all persons charged with criminal offenses in the State of Georgia, by Paragraph 8, Section 1f, Article 1, of the constitution of said State, that no person shall be put in jeopardy of life or liberty more than once for the same offense; save on his or her own motion for a new trial after conviction or in case of mistrial.”
